

EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2007 694

JILLIAN LAYNE JACKSON
1892 Miriam Way
Ripon CA 95366

STATEMENT OF ISSUES

Applicant/Respondent

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about December 11, 2007, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from Jillian Layne Jackson (Respondent). On or about December 6, 2007, Jillian Layne Jackson certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on February 21, 2008. In a letter the Board received on March 5, 2008, Respondent requested a hearing on the denial.

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1 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
2 conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under Section
4 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
5 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
6 accusation, information, or indictment.”

7 8. Section 3754 of the Code states: “The board may deny an application for,
8 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
9 upon, a license in any decision made after a hearing, as provided in Section 3753.”

10 9. California Code of Regulations, title 16, section 1399.370, states:

11 “For the purposes of denial, suspension, or revocation of a license, a crime or act
12 shall be considered to be substantially related to the qualifications, functions or duties of
13 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
14 perform the functions authorized by his or her license or in a manner inconsistent with the
15 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
16 those involving the following:

17 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
18 abetting the violation of or conspiring to violate any provision or term of the Act.

19 “(c) Conviction of a crime involving driving under the influence or reckless
20 driving while under the influence.”

21 COST RECOVERY

22 10. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the board,
24 the board or the administrative law judge may direct any practitioner or applicant found to have
25 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

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1 11. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees."

5 12. Section 3753.1 of the Code states:

6 "(a) An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation. "

9 FIRST CAUSE FOR DENIAL OF APPLICATION

10 (Substantially-related convictions)

11 13. Respondent's application is subject to denial under code sections 3750(d)
12 and (g), 3752 [conviction of a crime], and CCR 1399.370(a) [substantial relationship criteria]
13 and 1399.370(c) [conviction of a crime involving driving while under the influence] in that she
14 has two convictions for violating Vehicle Code section 23152(b) [driving with a 0.08% blood
15 alcohol content or higher] in 2003 and 2007. The circumstances are as follows:

16 2003 conviction

17 14. On or about April 12, 2003, at 12:40 a.m., California Highway Patrol
18 (CHP) Officer Kessler investigated a call of a solo vehicle traffic collision. Officer Kessler
19 spoke with respondent at the collision scene while she was lying on a gurney in the back of an
20 ambulance. She was identified by her California driver's license, and she was the registered
21 owner of the car. She stated that she had been driving her vehicle southbound on South Van
22 Allen Road in an unincorporated portion of San Joaquin County when she lost control of the
23 vehicle. She could not recall how she lost control, and could not recall any details of the
24 collision except that a group of people came to her aid and helped her out of the vehicle. She
25 stated that she telephoned 911 and related that she had been involved in a collision. She stated
26 that she was alone in the vehicle. Officer Kessler asked her two more times if anyone else was in
27 the vehicle, and she related that no one was with her.

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1 A. As Officer Kessler spoke with respondent, he smelled the odor of an
2 alcoholic beverage coming from her breath and person. He noticed her eyes were bloodshot and
3 watery, and her speech was slurred. He asked her if she had consumed any alcohol earlier that
4 evening, and she admitted that she had.

5 B. San Joaquin Sheriff's Deputy Hamilton stated that he arrived on the scene
6 and observed respondent's vehicle located on its roof, and that the vehicle sustained major roll
7 over damage as a result of the collision, including damage to its entire body. He observed a
8 large group of people running away from the vehicle in all directions. He contacted respondent
9 and detained her until California Highway Patrol personnel arrived. He searched the area and
10 located a purse with a California driver license issued to M. H. Deputy Hamilton asked
11 respondent if she had any passengers at the time of the collision and she replied that she did not.

12 C. Deputy Hamilton contacted M.H. by telephone while he was at the scene
13 and she admitted that she was in the car with respondent at the time of the collision along with
14 three other people.

15 D. CHP Officer Kessler contacted M.H., who told him that respondent came
16 to her house and they began drinking alcohol. They next went to a party, where M.H. saw
17 respondent drinking alcohol. When they were ready to leave, M.H. stated that she warned
18 respondent not to drive due to her high level of intoxication, but respondent ignored her. M.H.
19 stated that respondent was speeding and when she tried to pass a car, she lost control, spun out
20 and hit a tree. The car then flipped over, and a large group of people helped get the passengers
21 out of the car.

22 15. Based on witness interviews, the physical evidence and analysis of the area
23 of impact, Officer Kessler determined that respondent had been driving under the influence of
24 alcohol prior to the collision. He placed respondent under arrest for violating Vehicle Code
25 section 23152(a), driving under the influence of alcohol per Vehicle Code section 40300.5(a)
26 [vehicle involved in a traffic accident.] He advised her of Vehicle Code section 23612 [implied
27 consent] and she chose a blood test.

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1 16. While at the hospital for the blood test, Officer Kessler again asked
2 respondent if anyone was in the vehicle with her at the time of the collision and she answered
3 “no.” He advised her that he knew there was at least one person in the vehicle since a driver’s
4 license and purse had been found at the scene, and that she would be responsible if anyone was
5 injured. Respondent told the officer that the license belonged to M.H., her best friend, but she
6 denied that M.H. was in the car at the time of the accident. She again denied that any one was in
7 the car with her.

8 17. In further investigation of the case, Officer Kessler contacted the other
9 passengers in the car with respondent. One of the passengers suffered a broken left clavicle as a
10 result of the collision. Officer Kessler returned to the jail and added a charge to respondent’s
11 booking of violating Vehicle Code section 23153(a) and (b) [felony DUI] for causing bodily
12 injury to another while driving a motor vehicle while intoxicated. Although not a factor in the
13 collision, Officer Kessler noted that respondent was in violation of Vehicle Code section 31
14 [false information to a police officer] for refusing to tell him that there were additional people in
15 the vehicle during the collision.

16 18. On or about April 25, 2003, a criminal complaint titled *People of the State*
17 *of California vs. Jillian Layne Jackson*, case no. 76188RR was filed in Superior Court, San
18 Joaquin County. Count 1 charged respondent with a felony violation of Vehicle Code section
19 23153(a) [driving under the influence of alcohol or drugs causing injury.] Count 2 charged
20 respondent with a felony violation of Vehicle Code section 23153(b) [driving with .08% blood
21 alcohol causing injury.] Count 3 charged respondent with a misdemeanor violation of Vehicle
22 Code section 31[false information to a police officer.] Count 4 charged respondent with a
23 misdemeanor violation of Vehicle Code section 16028(a) [failure to provide evidence of
24 financial responsibility.]

25 19. On or about May 15, 2003, the complaint was amended as to Count 2, a
26 violation of Vehicle Code section 23153(b) [driving with .08% blood alcohol causing injury] and
27 changed to a misdemeanor violation. Respondent entered a plea of nolo contendere to Count 2.
28 The Court accepted the plea. Counts 1, 3 and 4 were dismissed in the interests of justice.

Respondent was then sentenced to probation for three years. Respondent was ordered to participate in a first offenders program (three month program). Her blood alcohol content at the time of arrest was noted to be .13%. She was ordered to pay fines, submit to testing as directed by probation, her driving privilege was restricted for three months. She was ordered to serve five days jail with credit for two days served. Alternative work program was allowed. She was ordered to make restitution for damages as to count 2 as recommended by probation.

20. On September 3, 2004, the court docket notes that respondent completed counseling and paid fines and fees in full. On September 9, 2004, probation as granted was modified from formal to informal.

2007 conviction

21. On or about February 3, 2007, at approximately 2:47 a.m., Ripon Police Officer Steven Merchant observed a vehicle weaving back and forth on Jacktone Road in Ripon, California. He saw the vehicle drive onto the right shoulder of the roadway twice. Because of the unsafe driving, he decided to check on the driver's welfare. As he approached the vehicle, it suddenly turned in front of his patrol car. The vehicle then crossed the center line, and drove into the northbound lane towards the officer. He pulled to the side of the road to avoid a collision. He then stopped the vehicle using his lighting and siren.

22. Officer Merchant spoke to the driver. He immediately smelled the odor of an alcoholic beverage inside the vehicle, and saw that the driver's eyes were red and blood shot. The driver (identified as respondent by her driver's license) said, "I'm really sorry. I've been drinking a little bit." He asked respondent why she was weaving, and she said, "I shouldn't be driving." When she spoke, he smelled a strong odor of alcohol on her breath. She stated that she had been at the "Valley Inn" which is a bar in Escalon, California. At one point, respondent told the officer, "I feel really stupid, just take me to jail." She admitted that she had been driving with the head lamps off, and admitted that she may have been weaving because she was talking on her cell phone.

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1 23. Officer Merchant asked respondent to exit the vehicle to perform field
2 sobriety tests (FSTs). She was wearing boots with a large heel, and she told the officer that she
3 was sinking into the dirt due to her boots. He asked her to move closer to the roadway and stand
4 on crushed rock to complete FSTs, however, due to the traffic, he felt it was unsafe and asked her
5 to move back to the shoulder of the road.

6 24. Respondent admitted that starting at about 6:00 p.m. that night, she drank
7 three glasses of wine and three “kamikazes” that contained vodka. She refused to complete a
8 preliminary alcohol screening (P.A.S.) test. Based on her poor performance on the FSTs, her
9 driving actions, objective symptoms of intoxication, and admissions that she had been drinking
10 alcohol, Officer Merchant transported respondent to the Ripon Police Department. She provided
11 a breath test, and the P.A.S. results were positive for alcohol in the amount of .20%/.20%.

12 25. Officer Merchant arrested respondent for violations of Vehicle Code
13 sections 23152(a)[driving under the influence of alcohol,] a misdemeanor; Vehicle Code section
14 23152(b) [driving with a 0.08% breath or blood alcohol content or higher], a misdemeanor;
15 Vehicle Code section 22107 [unsafe turn] and Vehicle Code section 24250 [driving without
16 lighting.]

17 26. On or about February 9, 2007, a criminal complaint titled *People of the*
18 *State of California vs. Jillian Layne Jackson*, case no. MM114303A was filed in Superior Court,
19 San Joaquin County. Count 1 charged respondent with a violation of Vehicle Code section
20 23152(a)[driving under the influence of alcohol,] a misdemeanor. Count 2 charged respondent
21 with a violation of Vehicle Code section 23152(b) [driving with a 0.08% breath or blood alcohol
22 content or higher], a misdemeanor. Count 3 charged respondent with a violation of Vehicle
23 Code section 24250 [driving without lighting] and Count 4 charged respondent with a violation
24 of Vehicle Code section 22107 [unsafe turn.]

25 27. On March 7, 2007, respondent entered a plea of nolo contendere to Count
26 2, and Counts 1, 3 and 4 were dismissed on motion of the Deputy District Attorney in the interest
27 of justice. The Court accepted the plea, and sentenced respondent to five years probation. She
28 was ordered to participate in a treatment program approved by the probation officer, and to report

and enroll in a county approved alcohol program. The Court noted that her breath alcohol content level was reported to be .20% at the time of the arrest. She was ordered to submit to random testing, to install an ignition interlock device on any vehicle owned or operated, and maintain it for one year or until her driving privilege is reinstated. She was ordered to pay fines and fees, serve fifteen days in jail with credit for time served of two days. The Court had no objection to home detention or the alternative work program.

28. Therefore, respondent's application is subject to denial based on her two convictions for driving under the influence of alcohol, which are substantially related to the practice of respiratory care and in violation of code sections code sections 3750(d) and (g), 3752 [conviction of a crime], and CCR 1399.370(a) [substantial relationship criteria] and 1399.370(c) [conviction of a crime involving driving while under the influence.]

SECOND CAUSE FOR DENIAL

(Dishonest Act)

29. Paragraphs 14 through 27 are incorporated herein.

30. Respondent's application is subject to denial based on a violation of code section 3750(j) [dishonest act] in that on April 12, 2003, she was interviewed separately by CHP Officer Kessler and San Joaquin Sheriff's Deputy Hamilton. She stated to each law enforcement official that she was alone in the vehicle. However, at the time she made this statement, she was aware that three other people were in the car at the time of the collision.

31. Officer Kessler informed respondent that a purse containing a driver's license was found at the scene of the collision, and she identified the license as belonging to her best friend M.H. When Officer Kessler asked respondent if M.H. was in the car at the time of the collision, respondent stated that no one else was in the car.

32. Officer Kessler contacted M.H. and learned that four additional people were in the vehicle in addition to respondent.

33. Therefore, respondent's repeated statements that she was alone in the car when she was aware that four people were in the car at the time of the collision are dishonest acts in violation of code section 3750(j) and cause for denial of the application.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Denying the application of Jillian Layne Jackson for a Respiratory Care
5 Practitioner License;

6 2. Directing Jillian Layne Jackson to pay to the Respiratory Care Board of
7 California the costs of the investigation and enforcement of this case, and if placed on probation,
8 the costs of probation monitoring;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: May 7, 2008

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14 Original signed by Liane Zimmerman for:
15 STEPHANIE NUNEZ
16 Executive Officer
17 Respiratory Care Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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